

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

ROBERT VARDELL FRANCIS,

Plaintiff,

v.

CIVIL ACTION NO: 2:17-CV-01726

NANCY A. BERRYHILL,

Acting Commissioner,
Social Security Administration,

Defendant.

MEMORANDUM OPINION AND ORDER

On March 9, 2017, plaintiff instituted this action seeking judicial review of the Acting Commissioner's final decision pursuant to 42 U.S.C.A. § 405(g). The sole issue before the court is whether the decision denying plaintiff's claim for disability insurance benefits under Title II of the Social Security Act is supported by substantial evidence.

See 42 U.S.C.A. § 405(g).

On October 7, 2015, the Honorable Jon K. Johnson, administrative law judge ("ALJ"), entered a decision finding that plaintiff was not disabled under the Act and denying benefits. It became the final decision of the Acting Commissioner on January 10, 2017 when the Appeals Council denied review.

By standing order this action was referred to the Honorable Omar J. Aboulhosn, United States Magistrate Judge. On November 8, 2017, the magistrate judge filed his Proposed Findings and Recommendation ("PF&R"). In the PF&R, the magistrate judge recommended that plaintiff's request for judgment on the pleadings be denied, defendant's request for judgment to affirm the decision of the Acting Commissioner be granted, the Acting Commissioner's final decision be affirmed, and this action be dismissed from the docket of the court.

On November 27, 2017, plaintiff filed his objections. Plaintiff objects to the magistrate judge's statement that his having worked at Lowe's part-time for nearly eight months after the amended alleged onset of his disability supports the administrative law judge's finding that his reports of pain were not entirely credible. Plaintiff notes that the job did not rise to the level of substantial gainful activity and should not be considered.

The magistrate judge thoroughly summarized the available evidence in the case, showing how the ALJ's analysis followed the Social Security Ruling 96-7p then in effect. After having done so, the magistrate judge added: "Moreover, it is incongruous that Claimant's amended alleged onset date is nearly eight months before he quit working part-time at Lowe's." PF&R at 22. It is the ALJ's analysis, and not the magistrate judge's passing "Moreover . . ." remark about plaintiff's employment at

Lowe's, that clearly supported the ALJ's determination, providing the requisite "substantial evidence."

While the plaintiff objects to the "post hoc rationale" and "assist" the magistrate judge allegedly supplied to the ALJ's ruling, the objection is misplaced. The ruling stands firmly on its own legs, as the PF&R explains, and is in no need of additional assistance. If, on the other hand, plaintiff attempts to raise anew his argument that the ALJ improperly failed to fully credit his statements regarding the extent of his pain and his limitations, the PF&R, considered in its entirety, adequately addresses that contention.

The court also keeps in mind that the "substantial evidence" standard of review, which it must apply in evaluating the Commissioner's decision, is a deferential one, Blalock v. Richardson, 483 F.2d 773, 776 (4th Cir. 1972), and that the Commissioner, not the court, is charged with resolving any conflicts in the evidence, Hays v. Sullivan, 907 F.2d 1453, 1456 (4th Cir. 1990).

For the reasons stated, and having reviewed the record de novo, the court ORDERS as follows:

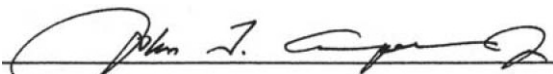
1. That the objections be, and they hereby are, overruled;
2. That the PF&R be, and it hereby is, adopted and

incorporated herein;

3. That the plaintiff's request for judgment on the pleadings be, and it hereby is, denied;
4. That the defendant's request to affirm the final decision of the Commissioner be, and it hereby is, granted;
5. That the Commissioner's final decision be, and it hereby is, affirmed;
6. That judgment be, and it hereby is, granted in favor of the Commissioner; and
7. That this civil action be, and it hereby is, dismissed and stricken from the docket.

The Clerk is directed to forward copies of this written opinion and order to all counsel of record and United States Magistrate Judge Omar J. Aboulhosn.

DATED: December 11, 2017



John T. Copenhaver, Jr.
United States District Judge